

**Illinois State Bar Association
Special Committee on Succession and Transition Planning**

***Succession Attorney Guide and Resources For Successfully Transitioning
Into a New Practice***

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Section Summaries:

1. Introduction and General Considerations

This guide is written for the attorney who is buying a law firm, or who is otherwise looking to assume legal responsibilities and financial interests in another lawyer's law firm. Throughout this guide we offer links to resources we hope are helpful to the lawyer who is looking to buy or has bought another lawyer's law firm. Click [here](#) to visit our Committee website with links to CLEs, guides, and other resources. <https://www.isba.org/committees/successionandtransitionplanning>

2. Financing the Transition and the Firm

This section explores how an attorney can value a practice that is for sale, as well as calculate the expected fees the law firm will generate.

3. Emergency Transfer of a Practice

This section discusses the special needs of an emergency transfer of a practice, including what tasks need to be accomplished the first week to what should be accomplished by the end of the first three months.

4. Client Retention and Acquisition

This section will discuss ISBA sponsored and other programs and materials related to maintaining current client relationships and general guides on the asset take over of the firm. This section will also include an in depth overview of current advertising mechanisms, especially focusing on social media and third party legal matching services.

5. Communications

This section will discuss the immediate client notice rule which requires the selling lawyer to notify his clients of the sale of the law practice.

6. Human Resources

Along with compensation plans for support staff and other attorneys, succeeding attorneys will need a human resources plan in place to govern health insurance, retirement, employee policies and disputes, employee review, and other benefits as deemed necessary. The succeeding attorney should consult, if possible, with the transitioning attorney regarding employee policies and benefit plans already in place.

7. Attorney Malpractice Insurance

This section will provide succeeding attorneys with malpractice insurance guidance, including ISBA Mutual and its resources. The section will also highlight the benefits of malpractice insurance as well as procedures for handling claims.

8. ARDC Complaints, ARDC Ethics Inquiry Line

The Attorney Registration and Disciplinary Committee section will explore how to respond, as a succeeding attorney, to new client complaints. In addition, this section will explore the best practices which should be employed to handle complaints addressed to the transitioning lawyer or firm's past clients with complaints and whether these complaints will affect an transition attorney.

9. Research Tools

New attorneys and sole practitioners are tasked with deciding which, if any, legal research database should be purchased. This section will explore ISBA's FastCase resource as well as the costs and benefits of purchasing WestLaw or Lexis Nexis, or using Google Scholar.

10. ISBA Attorney Resources

In addition to being included where relevant in this guide, this section will summarize and outline ISBA resources such as FastCase, CLE, publications, member directories and succession and transition lawyer matching services.

1. Introduction

The purpose of this guide is to help lawyers navigate the process of buying an attorney's law practice. The Committee's goal is to provide lawyers buying a practice with resources and direction when undertaking the unique task of assuming a lawyer's practice. While we strive to cover as many topics with important, basic transition information, we welcome feedback. This is an evolving document and its authors invite comment, critique, and suggestion.

By way of background, the Special Committee on Succession and Transition Planning was formed by first past president ISBA President Hon. Russell Hartigan (ret.) in 2017 to help lawyers prepare for life events, some of which may be unplanned, that result in the closure of a lawyer's law practice. The closure of a law practice can present serious and far reaching issues for a lawyer and the lawyer's clients including protecting client rights and confidential information, preserving client property, ensuring access to electronic files and business management systems, addressing the unique issues of transitioning a law firm, among others. The mission of the Special Committee is to provide guidance, education, and resources to enable lawyers to properly plan for and handle the transition of a practice in an emergency due to a catastrophic event or when the lawyer retires or is otherwise no longer able to practice. To do this the Special Committee is tasked with consolidating the many already existing ISBA succession and transition planning resources, updating those resources where necessary, preparing new resources where appropriate guidance is lacking, and considering whether specific Supreme Court rules would be beneficial to help lawyers protect their clients and practices in the event of unanticipated events.

The Special Committee encourages you to send us comments about your experiences and any of the resources provided on the ISBA Practice Transition website. Please send your practice transition comments, questions, or suggestions for the Special Committee to us at ISBASuccession@isba.org.

We encourage you to explore the resources on the Committee's [website](#), and we have linked to resources in this document when available. <https://www.isba.org/committees/successionandtransitionplanning>

General Considerations

Finding a lawyer who is preparing for the sale of his or her practice may seem like looking for a needle in a haystack full of needles. To help both lawyers looking to transition out of practice and those looking to acquire a practice, this Committee is gathering attorney contact information to connect lawyers looking to sell a practice with lawyers looking to buy a practice. This resource should be available within the 2019-2020 bar year.

Since 2005, attorneys in Illinois practicing as sole practitioners have been allowed to sell their law practice. An attorney may also become ill or incapacitated such that they need to leave their practice, which often includes the sale of the practice. Sales of a law practice are regulated by Illinois Rules of Professional Conduct [Rule 1.17](http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_VIII/ArtVIII_NEW.htm#1.17). http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_VIII/ArtVIII_NEW.htm#1.17

The Rule allows the sole practitioner to sell the practice themselves, and it also allows for an authorized representative to sell the practice of a disabled lawyer. As amended in 2010, the Rule shortened and simplified the timeline of buying and selling a practice. Since client interests are the top priority, proper planning can shorten the time needed to accomplish critical tasks in order to more readily protect clients and provide the opportunity to minimize the post transition event expenses, maximize fee and overhead cost recovery, and bring a greater price for the practice.

Under Rule 1.17, the selling lawyer is required to give each client notice of the proposed sale, the client's right to retain other counsel or to take possession of the file, and that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within 90 days of receipt of the notice. Parties can also obtain the client's written consent to the transfer and allow immediate service.

The comments to Rule 1.17 guide the buyer and seller of the practice through the transition as well as highlight the importance of always representing the interests of the clients. While the rules require that the entire practice be sold does not prohibit clients from taking their business elsewhere. The lawyer selling the practice is also prohibited from engaging in the private practice of law after the sale of his or her practice.

If you are deciding whether to buy a law practice, do your research. Check with the Better Business Bureau, the ARDC, and ask the legal community for an honest assessment of the selling lawyer's practice. In other words, don't check your common sense at the door.

2. Financing the Transition and the Firm

There are generally two categories of individuals who may choose to buy a law practice. A young, under-experienced lawyer may choose to purchase an established practice because of the prospect of a steady income stream from the seller's established client base. While on the other hand, an experienced lawyer may be looking to buy a practice for a multitude of reasons including expansion of an existing practice. The under-experienced and experienced lawyer will approach the process of buying a firm differently in certain important areas.

This guide is written with the express understanding that almost all law student graduates face an unprecedented student loan debt burden. However, the members of this committee believe that newer lawyers buying a practice is a feasible and sound financial decision. Before buying a practice though, the buyer must conduct a thorough valuation and ask for a second opinion from a colleague.

Valuation

The valuation of a practice should be made based on a case by case basis. The value of the practice should be based upon a prediction of the future based on known and current facts. The selling lawyer will be considering what is an acceptable return on the practice and its tangible assets including the succeeding lawyer's work in progress and projected stream of future business. The three most common methods for determining valuation are the (1) book value method, (2) fair market value, and (3) income or cash flow method. Other valuation considerations will be addressed before we consider each valuation method.

Expected Fees

At the outset, the selling lawyer should provide the buying lawyer with an evaluation of the expected fees the buying lawyer should earn for finishing the current client work. The buying lawyer will also need to review the selling lawyer's financial records, especially the amount of fees received for the last three to five years. If the practice transfer is an emergency, a review of the records for the past three to five years, including tax returns, is even more important.

Overhead Costs

If the buying and selling lawyers are in a non-emergency situation, then an agreement should be reached regarding the transfer of overhead costs. It is most common for the overhead costs to be shifted from the selling attorney to the buying attorney who is using the practice to generate fees. However, make sure that any overhead shifting or allocation to the new lawyer or firm relates to the overhead fees being produced by the work being transferred which is generating or should generate fees for the buyer. We emphasize paying special attention to the issue of overhead costs, as it is often overlooked.

Timing of Transition

The timing of the transition also directly relates to the value of the firm. The more time that passes after a sudden transition event, the less the practice is worth. Also, the amount of immediate demands for service and the case review process can create a cost/benefit problem for a purchasing lawyer or firm because of the time required for the transition. This is where a younger lawyer gains an advantage. While a more experienced lawyer may not have the time needed to manage another busy practice, a young lawyer can engage in the work produced by the seller's firm full-time.

It is in the best interests of both the buying and selling lawyer to complete the transfer of the practice as quickly as possible. Asking for clients to waive notice in the early stages of transition and to approve the immediate transfer of the file are important parts of the transfer process because both reduce delay and protect the client. The transfer rules encourage the prompt transfer of files with the client's consent.

Because of the clients' interests there is an immediate need to either close the office as soon as possible or preferably get another lawyer to take over all or part of the office expense as part of the transition process.

List of Items that Can Be Identified, Valued, and Transferred

1. Cash
2. Furniture
3. Fixtures
4. Equipment
5. Office supplies

6. Law library (including online)
7. Real estate or leasehold interest
8. Advertising in place
9. Telephone numbers
10. Proprietary computer software (including brief and motion banks)
11. Fees and billing information
12. Accounts receivable
13. Trust accounts
14. Insurance policies
15. Costs advanced and work in progress which is near completed completed but not yet billed as receivable
16. Case management programs and databases of files and clients

Non-Tangible Value: Practice Goodwill

Established practices will hopefully generate practice goodwill which will translate into obtaining new clients and sustaining current client relationships. Goodwill is the ability outperform the competition because of skill, reputation, location, or special talent or other qualifications. Practice goodwill also includes staff members' relationship with clients and the work product the staff can generate for the clients. The Illinois Supreme Court does not recognize practice goodwill, but it is nonetheless a concept that should be considered by both parties.

In many offices, the files in progress will be enough to generate substantial fees without any new business. The expected fees for completing the work in progress can justify a significant business generation credit or fee. Ongoing high fee generating clients add value. The amount of cash flow that can be generated by the firm's clients and current work in progress is another important aspect of this valuation factor. The amount of advance fee deposits or "evergreen" fee deposit agreements may also make the practice more attractive because they avoid collection problems.

The buying and selling lawyer should also consider the tentative future cash flow. Considerations include both how much work is there to complete and how much new work will the practice generate, both from existing and new clients.

Professional Appraisals

Typically professional appraisals will rely on the practice's dry numbers and may not include important intangible considerations (practice goodwill). Another option to a professional appraisal is a second opinion from a colleague. It is also important to consider the time an appraisal will take to conduct. An emergency transition may not lend itself to a thorough appraisal given the immediate need to take care of client matters.

Financing the Transition

After the buying and selling attorneys have agreed on the value of the practice, next the selling attorney must decide how to finance the purchase. The Committee** encourages the buying lawyer to negotiate with the selling lawyer with financing the transition to reach a fair result considering the value of the firm, the practice goodwill, the debt-load of the purchasing attorney, and the experience of the purchasing attorney. If the buying lawyer does not have the cash flow necessary to purchase the practice outright, the buying and selling lawyer may come to an agreement where the buying lawyer gives the selling lawyer a percentage of the fees earned from outstanding client matters, with a cash payment for the tangible assets.

Members of this committee have witnessed situations where deceased solo practitioners, with a practice including staff of six staff members, generated a large gross profit each year. If Illinois had allowed for the sale of a law practice at that time, two or three lawyers could have turned a profit worth buying into the practice. This scenario highlights the value which can be obtained by buying into a practice and the opportunity which can come from negotiating with a lawyer looking to leave the practice of law.

To avoid unnecessary costs, an attorney looking to buy a firm should look for a well-organized office. A well-organized office will minimize the transition expenses and the buying attorney will earn maximum value on the fees generated from existing client matters. Buyers want to look for a firm that will allow for the immediate generation of fees. The more a practice is organized, the quicker the buying attorney can begin earning fees from the practice.

We encourage attorneys to negotiate creative contract financing which allows for the profitable transition of a practice to an eager buyer willing to work to establish his name and reputation in the community.

3. **Emergency Transfer of a Practice**

Ideally the lawyer buying the law firm will be able to plan well advance with the lawyer selling the law firm (or otherwise transitioning out of practice) to prepare for a smooth transition. Inevitably, however, there will be scenarios where the buying and selling lawyers do not have enough time to plan with each and an emergency transfer must take place. While effective transition plans are encouraged, this section will help guide the lawyer who is either buying the practice or otherwise handling the emergency transfer of a law practice.

Immediate Actions

- Obtain access to the lawyer's email and scheduling databases.
- Check the lawyer's calendar, docket, and to-do lists to determine the urgent client matters that need to be handled without delay, and the court appearances that cannot be rescheduled.
- Immediately contact all clients, opposing parties, judges, and others involved with the urgent cases. See Rule 1.17. When possible, obtain the client's written consent to review and handle the client files.
- Take steps to file deadline items prior to the statute of limitations date and appearance date, or file the necessary requests for extensions.
- Appear in court to obtain continuances, or arrange for an attorney to cover appearances.

****Remember:** Time and money spent in the first few days will help to ensure a prompt, orderly transition, will hopefully result in a quicker and smoother practice transfer, in addition to a better collection rate on earned and billed fees, higher value received for the practice, lower expenses, and happier clients with fewer problems during the sale and transfer of the practice.**

First Week Tasks

- Inform all remaining clients of the status of the practice and their legal matters with the firm. See Rule 1.17. We recommend using email.
- Inform all remaining opposing counsels and judges about the status of certain cases with the transitioning firm. We recommend using email.
- Ensure staff will continue to perform their duties, and for how long.
- Determine how the staff will be paid (i.e. did the attorney leave a fund to pay staff in the event of his inability to practice?).

- Determine the cost of overhead (including staff payments and benefit costs) and who will be responsible for those costs.
- Establish a time frame for all other work that does not need immediate attention. Try to determine what needs to be worked on (1) immediately, (2) within the first week, (2) within the first two weeks, (3) with the first month, and (4) within the first quarter (3 months).
- Collect fees for work already performed.
- Bill clients for work performed during the first few days and first week.

Keep in mind that, in most cases, the retention of an experienced staff makes a difference in how well the transition is completed and the value received. Good longer-term staff members often have relationship with clients, and know what to do without much guidance, which is invaluable during an emergency transfer. The cost of paying the staff will pay off in the long run.

First Two Weeks

- Send remaining Rule 1.17 notices to clients. All required 1.17 client notices should be sent promptly, but to the extent possible, should be sent by at least the end of the first two weeks.
- Speak to remaining opposing counsel and judges regarding outstanding client matters.
- Finalize the law firm sale agreement, including transferring leases and insurance policies.
- Complete substitution of attorney filings where necessary.
- Continue billing for client work performed and collecting fees therefrom.
- Meet with support staff to discuss their expectations and plans. Some support staff may choose to retire after the lawyer transitions out of practice. If a staff members plans to retire, try to find a replacement as soon as possible so the retiring employee can train the new employee.

Communicating with the clients and tribunals as soon as possible are the most important tasks to complete. It is also worth considering contacting local bar associations for assistance during the emergency transfer of a practice. Bar associations may be able to provide a list of attorney that could assist with court appearances.

4. Client Retention and Acquisition

The succeeding and transitioning attorneys should notify the firm's clients of the sale of the practice as soon as possible. Under Illinois Rule of Professional Conduct 1.17, clients must be promptly notified of (1) the sale of the practice; (2) the client's right to retain other counsel or to take possession of the file; and (3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety days of receipt of the notice. Ill. R. Prof. Cond. 1.17.

We suggest that the attorney buying the practice encourage the selling attorney to notify clients about the sale of the practice via email and as soon as possible. Although not required by the rule, the selling lawyer should inform the client who or what firm bought the practice. This way, the lawyer taking over the clients' legal matters can begin communicating with those clients as early as possible, engaging in dialogue with the client to build trust and confidence in the buying lawyer's abilities. With upfront and transparent communication, hopefully the clients of the selling lawyer's firm will continue to be clients during and after the transition and sale of the law practice.

After notifying clients as required under Rule 1.17, the lawyer buying the practice should prepare a client retention plan prior or at least during the sale of the practice. This retention plan should include advertising plans, website marketing, use of lawyer matching service and referral programs.

The ISBA offers the Illinois Lawyer Finder which allows clients to either search for a lawyer or request a free 30 minute consultation. Lawyers are required to be in good standing and carry professional liability insurance to use this service. ISBA offers two membership levels: premium and basic. Click [here](https://www.isba.org/resources/lawyerfinderforms/premiumrules) (<https://www.isba.org/resources/lawyerfinderforms/premiumrules>) to read the rules and apply for a premium listing. And click [here](https://www.isba.org/resources/lawyerfinderforms/basicrules) (<https://www.isba.org/resources/lawyerfinderforms/basicrules>) to read the rules and apply for a basic listing.

Lawyer matching services are more prominent than ever before. These services include avvo.com, legalmatch.com, and justanswer.com, among many others. Keep in mind that when using matching services, the benefits the lawyer reaps may depend on the financial contribution paid to the site for promotion. These lawyer matching services may also offer other marketing services including online presence and

websites, as well as a way for a lawyer to interact with potential clients through question and answer forums.

It's also important to think about the possible fee sharing problems with certain matching services. Recently, questions have arisen regarding the issue of these legal matching services possibly fee sharing with lawyers which may violate Illinois Rule of Professional Conduct 5.4, Professional Independence of a Lawyer. Rule 5.4 prohibits non-lawyers from sharing in the fees received for legal services. Click [here](https://www.isba.org/resources/lawyerfinderforms/basicrules) (<https://www.isba.org/resources/lawyerfinderforms/basicrules>) to read a Study from the Illinois Supreme Court's Attorney Registration and Disciplinary Commission report on client-lawyer matching services. The Illinois State Bar Association's responded to the ARDC's report and among other points, argued that the ARDC's study suggested elimination of the prohibition against fee sharing with nonlawyer for-profit matching services violates public policy by allowing nonlawyers to control cases and facilitating the unauthorized practice of law. Check out ISBA's full response [here](https://www.isba.org/sites/default/files/Comments%20to%20ARDC%20Matching%20Services%20Study%20Letter%20from%20McCluskey.pdf) (<https://www.isba.org/sites/default/files/Comments%20to%20ARDC%20Matching%20Services%20Study%20Letter%20from%20McCluskey.pdf>).

The ISBA also pointed out that the Study does not provide meaningful guidance to lawyers who wish to participate in matching services on topics including handling fees and costs, refunds, and providing additional services. If you are interested in using legal matching services, pay attention to evolving rules and codes of conduct.

Law firm marketing strategies have drastically changed over the past decade. Today some of the most effective marketing tools are the internet and social media. The internet allows a lawyer and a law firm to reach a wide audience and communicate the firm's message clearly and directly. Clients are looking for an easy to find website, that shows the lawyer's past successes in a clean and simple format. Since many small-firm clients will research attorneys on their own, the attorney's presence in searches is key to developing a relationship between the potential clients and the lawyer.

We suggest researching local and national advertising agencies that specialize in internet marketing. Working with local companies gives you a more personal connection which may be beneficial when problems arise with services. On the other hand, non-local or strictly internet based services may be less expensive. Look at local attorney's and law firm's websites to see which look the most effective. Often times the advertising or website development company will be listed on the website.

Also consider taking over the former attorney's website and contracts with search engines like Google and Bing. A contract that you could assume the responsibility of may be at a better rate than entering a contract anew. And adopting the former attorney's web-presence is far more cost effective than designing a website from the ground up. When either creating a web presence from the beginning or taking over a lawyer's internet presence, consider the mobile compatibility of the website. While not all consumers wish to download an app for one specific business, it is far more convenient to have a mobile adaptable website.

The simplest way to increase traffic to your website, but not the most cost-effective, is to pay search engines for advertising services so that the lawyer's firm is a top result for a given search. If an additional monthly expense for internet advertising is not feasible, we recommend researching search engine optimization (SEO), which focuses on growing search visibility in non-paid search engine results. SEO largely relies on the use of keywords displayed on a web page, which can be found by researching competitor's websites.

One of the most important requirements to running a successful law practice is potential new clients seeking information your legal services. For this reason, the quickness with which the attorney returns the lead phone call or message is paramount to securing the potential client's business. A client is much more likely to hire an attorney who quickly returned his call and acted interested in the case from the first moment. We suggest using phone number applications which allow the user to call from a business number from his cell phone. Check out apps like spoofcard and zipwhip for easy ways to communicate with potential clients without giving up your personal cell phone number.

We encourage attorneys to be creative with their law firm marketing and client retention efforts, but first remember that when buying a law practice the selling lawyer should immediately notify his clients of the sale.

5. Communications

The same rule that governs the sale of a law practice governs the notice requirements resulting from that sale. Under Rule 1.17, the selling lawyer must give written notice to each of the seller's clients regarding: (1) the proposed sale; (2) the client's right to retain other counsel or to take possession of the file; and (3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within 90 days of receipt of the notice.

The rule also provides that “[i]f a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court *in camera* information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.” Rule 1.17.

Information relating to a client's case can only be disclosed by the seller to the buyer if the client is given “actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days.” Rule 1.17, comment 7.

Although written notice to the clients is undeniably required, the rule does not prohibit notice by email. We recommend that the seller use email, when practical, to give notice to his clients that he or she is selling the law firm. The client retains the right to choose not to be represented by the buying lawyer, but we hope that with prompt notice from the selling lawyer and thorough follow up from the buying lawyer, the client will quickly agree to the transfer of the file.

6. Human Resources

If the lawyer buying into the practice will have staff, by either retaining the selling lawyer's staff or hiring new employees, the lawyer should implement a payroll and benefits plan. The buying lawyer should discuss with the selling lawyer the salaries paid to clerical staff. The lawyers should keep in mind, however, that sometimes staff has been with the selling lawyer for decades and the buying lawyer may not be able to reasonably afford to continue to pay the salary. It's important to have these conversations as early as possible so those involved can have managed expectations.

The lawyer buying the practice should consider whether or not the firm will provide its employees with vacation time, health insurance, life insurance and other additional benefits including retirement and bonuses. The lawyer should create a general outline of the salary structure for the firm's employees, as well as a system for managing and processing compensation and payroll.

Under the Affordable Care Act, if you offer health insurance to your employees, you must offer it to all eligible employees within 90 days of their employment start date. If you choose to provide coverage then the firm must provide its employees with a standard Summary of Benefits and Coverage" form to explain what the health plans covers and what it costs. If you fail to provide the form, your small business could face a penalty for non-compliance. Click [here](https://www.healthcare.gov/small-businesses/learn-more/how-aca-affects-business-es/) (<https://www.healthcare.gov/small-businesses/learn-more/how-aca-affects-business-es/>) to visit the healthcare.gov article that discusses the requirements for small businesses.

Similarly to health care, there are employee retirement plans that are tailored to small businesses. The IRS offers small business retirement plan resources which discuss different types of plans (SIMPLE IRA, SEP, 401(k)), the plan sponsor's responsibilities, and contribution limits by plan type. Click [here](https://www.irs.gov/retirement-plans/plan-sponsor/small-business-retirement-plan-resources) (<https://www.irs.gov/retirement-plans/plan-sponsor/small-business-retirement-plan-resources>) for more information.

A human resources plan will help the buying lawyer retain the services of the selling lawyer's staff. The staff that communicated with the clients before the sale of the practice will be able to secure the client's satisfaction with the transition. Maintaining the current business of the firm is key to the success of the transition. Showing your

employees that you want to provide for them will encourage them to work hard for you to continue working for a successful practice.

7. Attorney Malpractice Insurance

While attorney malpractice insurance is not required in Illinois, this Committee strongly recommends that attorneys considering purchasing malpractice insurance. Illinois Supreme Court Rule 756 requires solo and small firm practitioners to disclose whether or not he or she is covered by a legal malpractice insurance policy. If the lawyer does not have insurance on the date of registration, the lawyer is required to inform the Administrator why he or she does not have insurance. Remember that use of ISBA's referral program requires the attorney to maintain legal malpractice insurance.

Beginning this year, Illinois Supreme Court Rule 756 requires lawyers who do not have insurance to complete a self-assessment or obtain insurance by the following reporting year. The self-assessment includes a four hours of MCLE which includes the self-assessment and resources for the lawyer to address any issues raised by the self-assessment. All information related to the self-assessment is confidential (except the fact that the lawyer completed the assessment) and neither the Administrator of the Attorney Registration and Discipline Committee nor the lawyer may introduce information related to the self-assessment into evidence in a disciplinary proceeding.

So, while it may not be required, the ARDC strongly recommends that lawyers obtain malpractice insurance. ISBA Mutual offers legal malpractice and the carrier only serves Illinois and is run by lawyers who understand the malpractice needs of lawyers.

Malpractice policies are usually designed to provide coverage for claims that arise from "wrongful acts" committed in the rendering of legal services in your capacity as a lawyer. Covered acts typically include those acts committed as an ancillary service regularly provided by lawyers such as services as a notary public, service as a title agent, acting as a trustee in connection with the representation of a client, and acting as an officer of a legal profession association.

Most often, fraudulent, criminal, malicious, and dishonest act are not covered. Most attorney malpractice policies will also not cover service rendered to a business that is owned by the insured lawyer or law firm, bodily injury or property damage caused by the lawyer or law firm, and claims arising from legal services where the firm or lawyer should have foreseen the claim and failed to alert the insurer to the possibility of the claim.

Check out ISBA mutual's website [here](https://www.isbamutual.com/apply/) (https://www.isbamutual.com/apply/).

8. ARDC Complaints, ARDC Ethics Inquiry Line

This section explores the primary reasons most attorneys receive ARDC complaints, as well as the procedure which should be taken following a complaint and investigation. If you are considering buying a law practice, always check a law firm or lawyer's ARDC complaint history. This information can be accessed online at <https://www.iardc.org/>.

It is not uncommon for an attorney to receive a complaint from the ARDC during his or her career. It's also important to keep in mind that certain areas of law generate more ARDC complaints than others. The information in this section is largely taken from the Rules of the Attorney Registration and Disciplinary Commission. (www.iardc.org/Rules_of_the_ARDC.pdf) If you receive an ARDC complaint, respond as soon as possible.

Complaints are filed for many reasons, including: alleged incompetence, advertising, bad results, fee disputes, fraud, incivility, and failure to pay a financial obligation. The most important thing to remember is that if the ARDC send an inquiry, you must respond. If you have questions, always refer back to the Rules and reach out to the ARDC if necessary.

The Administrator may initiate an investigation on his own, based upon information from any source. (Rule 51) Any complaint received by the Administrator must be in writing and identify respondent and must "be sufficiently clear to apprise the respondent of the misconduct or unauthorized practice charged." (Rule 52) After the Administrator receives a complaint, it may request that the responding attorney provide information, in writing, regarding the allegations. (Rule 53) The Administrator can also ask for information from any other attorney who may have knowledge of the facts relating to the investigation. (Rule 53) The responding attorney must reply to the Administrator within 14 days of request. (Rule 53)

If the Administrator finds that there is sufficient evidence to show that the lawyer engaged in misconduct or the unauthorized practice of law, or for any other reason the Administrator believes further consideration is warranted, the Administrator should refer the matter to the inquiry board. (Rule 55) The Administrator will give the lawyer notice and an opportunity to respond, as well as information regarding requesting an appearance before the inquiry board. (Rule 55)

If the lawyer and the Administrator agree, the lawyer can participate in a diversion program "designed to afford the respondent an opportunity to address concerns

identified in the investigation” However, the diversion program is not an option for conduct that involved misappropriation of funds, a criminal act that reflects on the lawyer’s honest, actual loss to a client, or an incident involving dishonesty, fraud, deceit, or misrepresentation. (Rule 56(a)(1)-(4))

The lawyer and the Administrator can also agree to defer further proceedings “pending the attorney’s compliance with conditions imposed by the Board for supervision of the attorney for a specified period of time not to exceeds one year unless extended by the Inquiry Board prior to the conclusion of the specified period.” (Rule 108(a)) However, if the conduct under investigation involves (1) “misappropriation of funds or property of a client or a third party;” (2) “involves a criminal act that reflects adversely on the attorney’s honest;” or (3) “the conduct under investigation resulted in an actual loss to a client or other person” (Rule 108(a)(1)-(3))

If a case proceeds to the Inquiry Board, which consists of two lawyers and one nonlawyer, the concurrence of two members is necessary to enforce a decision by the panel. (Rule 101) The panel can also reconsider its decision to dismiss an investigation, to close an investigation, as well as other special actions. (Rule 101) A lawyer has a right to counsel if he is required to appear before a panel, or one of its members. (Rule 106)

If the Inquiry Board votes to continue proceedings, the Hearing Board shall conduct a hearing. The Hearing Board also consists of two lawyers and one nonlawyer, and two members of the panel are required for a decision. (Rule 201) The Rules require that the Hearing Board’s complaint contain a concise statement of the facts constituting the alleged misconduct. (Rule 211)

The complaint is filed and docketed by the Clerk, and service must be made to the responding lawyer. (Rules 212, 214) The responding lawyer is required to answer the complaint within 21 days of service, and the lawyer is also required to provide relevant information concerning his or her professional background. (Rule 231) Each allegation in the complaint shall be specifically admitted or denied by the lawyer, and every allegation not specifically denied will be deemed specifically admitted by the lawyer, unless the lawyer explains why he cannot make a specific denial. (Rule 233)

If a responding lawyer fails to answer the complaint, the Administrator may move to have all factual allegations deemed admitted. (Rule 236) After a complaint is filed, discovery is governed under the Illinois Civil rules of Procedure and Illinois Supreme Court Rules. (Rule 251)

After the hearing, the Hearing Board panel prepares “as soon as practicable” a report. (Rule 281) The panel of the Hearing Board may order a reprimand to the responding lawyer. “The reprimand shall include a description of the respondent’s misconduct and the reasons for the reprimand.” (Rule 282) Pursuant to Illinois Supreme Court Rule 753(e), the responding lawyer can file, within 21 days, exceptions to the order. After the filing of the exceptions, the Review Board will determine whether to grant those exceptions. (Rule 282) Responding lawyers cannot file post-trial motions, but rather must file exceptions under Illinois Supreme Court Rule 753(e). (Rules 282, 284)

Every report filed by the Hearing Board panel is reviewable by the Review Board as of right. The responding lawyer must file a Notice of Exceptions with the Clerk of the Commission within 21 days of receiving the Hearing Board report. (Rule 301) The rules also provide for the timeframes for filing briefs in support of the Notice of Exceptions. (Rule 302) The Review Board can also issue a reprimand, and it can also adopt the Hearing Board report. (Rule 311)

If the Review Board issues a reprimand, the responding lawyer shall be given 21 days notice of the time and place for the delivery of the reprimand. (Rule 312) The respondent or the Administrator, may file exceptions with the Court, as provided in Supreme Court Rule 753(e). (Rule 312) If no exceptions are filed, the delivery of the reprimand is final. (Rule 312)

The Illinois ARDC rules also provide for the process of Reinstatement. (Rules 400) The Client Protection Program is also available to claimants who experience a loss of money or property, but the claimant must meet certain criteria outlined in Article VII.

The Illinois ARDC rules also establish an Ethics Inquiry Program. (Rule 601) “The purpose of the program is to provide information to attorneys and other members of the public so that the inquirer may identify and determine the Rules of Conduct which apply to an attorney’s actions.” (Rule 602) Attorneys can call the ethics inquiry telephone line to “request assistance in identifying an applicable rule of conduct.” (Rule 603) All facts presented shall be in a hypothetical format. (Rule 603) The fact that an inquiry has been made, or the contents of the inquiry cannot be admitted in any attorney discipline proceedings. (Rule 605)

9. Research Tools

When a lawyer buys a law firm, he or she should first check to see whether the selling lawyer has a legal research subscription service. There are low-cost legal research engines, so subscriptions to Westlaw and LexisNexis are expensive and not always necessary.

When deciding whether to purchase a more expensive subscription, or to instead rely on Google and other less expensive search engines, the lawyer should consider how much he or she can reasonably spend on research tools for a period of three years. Perhaps in the early stages of assuming a lawyer's practice, the lawyer cuts costs by taking advantage of Google and ISBA's Fastcase, but then later on can consider a Westlaw or Lexis subscription.

When making this decision, the lawyer should also consider what the firm will be researching. Will the lawyers need access to other state's statutes? What about access to a plethora of secondary sources or to another state's caselaw? It's also important to consider that lower-cost or free legal research engines may not be the quickest and most efficient legal research tool. If you can, try to test out the options you are considering so you can make a well-informed decision.

The Illinois State Bar Association's Fastcase is an excellent and affordable research tool available to Association members. The ISBA Fastcase plan includes access to the U.S. Supreme Court, Federal Circuit, District and Bankruptcy Court, as well as the supreme and appellate courts for Illinois and all other states. On Fastcase you can also access statutes, regulations, constitutions, and the court rules for Illinois and other states. Fastcase is partnered with HeinOnline, which provides access to law journal articles. We encourage the reader to take a look at the Fastcase database for more information. (www.isba.org/fastcase)

Google Scholar is another affordable option, but it does not have as many search options as Fastcase, Westlaw, or Lexis. Google Scholar does not have a system to categorize good and bad law, and it does not have a keynote system either. Nonetheless, Google Scholar is an affordable research option that gives access to decades of case law as well as access to statutes, patents, and scholarly articles.

Before making a decision, of course check with the provider to ensure you will have access to your necessary sources.

For an excellent article comparing and contrasting the various legal search engines, visit <https://lawyerist.com/online-legal-research-tools/>. The ABA also has a comprehensive list of legal research engines: https://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/soloresearchoptions.html.

10. ISBA Attorney Resources

One of the most beneficial ways to build your reputation in the legal community, with your clients and other lawyers, is to become actively involved in a bar association. The Illinois Bar Association offers over 40 section councils, and over 25 standing committees, which offer support to lawyers and a forum to discuss law and policy. Each year, the ISBA accepts self-nominations for volunteer positions on ISBA Section Councils and Committees. Click [here](#) for a link to the nomination form. <https://www.isba.org/membergroups/nominations/about>

Each section council is responsible for a quarterly newsletter which is an excellent way to publish articles discussing new developments in your area of practice. Many of the section councils also sponsor a community in [ISBA Central](#), which allows practitioners to engage in dialogue about current issues in practice. <https://central.isba.org/home>

Yearly membership with ISBA also provides free access to hundreds of hours of continuing legal education. Eligible ISBA members can select from over 400 hours of online CLE content to earn up to 15 MCLE credit hours (including PMCLE) per bar year (July 1 - June 30) via the [online CLE site](#). <https://www.isba.org/cle/path?pathPage=%2Fisba%2F>

ISBA also sends out daily (or weekly) “e-clips” which provide quick takes on law, including case summaries. For busy practitioners, the case summaries can be an a welcome time-saver. The e-clips, along with ISBA’s FastCase, allow lawyers to stay up to date on the law at a lower cost than WestLaw or Lexis.

Practice HQ is another invaluable ISBA resource which, with your ISBA membership, offers meticulous guidance to each stage of the life of your practice, including (1) opening a firm; (2) building the firm; (3) managing the firm; (4) protecting the firm; and (5) winding the firm down. Each area provides detailed and comprehensive resources to navigating your way through each stage of the practice, from opening the door, to planning for the sale of the firm.

For example, the open a firm section offers technology related whitepapers and checklists for starting or merging a law firm. Practice HQ also offers product recommendations, marketing and advertising resources, management and technology consulting, document assembly (Illinois Bar Docs), financial services, and malpractice insurance. ISBA’s Practice HQ also offers a myriad of ethics resources including

advisory opinions on Using Third-Party and Cloud Technology, Client Files and Records, and Firm Names and Letterhead.

We encourage you to visit ISBA's [website](https://www.isba.org/) (https://www.isba.org/). The Association continues to update its resources all of the time. If there is something you would like more information about, please contact us and let us know. Please send any comments and suggestions to the author at Jessica.Fangman@gmail.com.